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SMITH et al. v. SMITH'S EX'R et al.

Jan. 24, 1918.

[94 S. E. 777.]

1. Wills (§ 436*)—Disposition of Personality—Construction—Domicile.—The law of the testator's domicile applies in construing his will as to personality.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 118.]

2. Wills (§ 436*)—Disposition of Realty—Lex Situs—What Law Governs.—A will disposing of a farm in Virginia must as to that be construed with reference to the Virginia law, as the lex situs governs.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 118.]

3. Domicile (§ 2*)—"Domicile" Distinguished from "Residence."—The words "residence" and "domicile" are not convertible terms, the latter being a word of more extensive significance, and meaning a residence at a particular place, accompanied with positive or presumptive proof of an intention to remain there for an indefinite time, while residence is a place of abode; a dwelling; a habitation; the act of abiding or dwelling in a place for some continuance of time.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Domicile; Residence. For other cases, see 3 Va.-W. Va. Enc. Dig. 116.]

4. Wills (§ 434*)—Full Faith and Credit—Probate Court.—Where a will had been probated many years previously in an orphans' court in Baltimore, Md., with ancillary probate in Virginia, its validity could not be questioned or attacked, as full faith and credit must be given to the judgment of that court.

[Ed. Note.—For other cases, see 13 Va. W. Va. Enc. Dig. 770.]

5. Wills (§ 434*)—Evidence—Probate of Will.—The probate of a will is not evidence in a collateral proceeding of the domicile of the testator, and other tribunals are not precluded from inquiring into the real domicile.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 770.]

6. Domicile (§ 10*)—Evidence—Declarations of Testator.—A testator's description of himself as "of the city of Baltimore, Maryland," is entitled to but little weight on the issue of his domicile.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 113.]

7. Domicile (§ 10*)—Evidence—Declarations of Testator.—In a suit for the construction of a will and for a decree declaring that plaintiffs took half of the estate, and for accounting, evidence held to show that the testator, dying in Baltimore, Md., and describing himself as of that city, was domiciled in Virginia at his death.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 113.]

8. Wills (§ 439*)—Construction—Intention.—The intention of the testator must govern the construction of his will and be given effect, unless it violates some rule of law.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 780.]

9. Wills (§ 597 (1*))—Construction—Devise—"Fee Simple."—A will devising all testator's real and personal estate to his wife for life, to be used and enjoyed by her as she should think proper, as fully as if it were hers in fee simple, and at her death to be equally divided among all testator's children then living, the descendants of any deceased child to take their parent's share, and expressing a will that no interest or estate should vest in any child or the descendants of any child until the death of his wife, gave the wife a fee simple in the entire property; "fee simple" being an estate of perpetuity conferring an unlimited power of alienation, and being the greatest possible estate in land.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Fee Simple. For other cases, see 13 Va.-W. Va. Enc. Dig. 826; 1 Va. Law Reg. 219; 3 Va. Law Reg. 65.]

Appeal from Chancery Court of Richmond.

Suit by O. Emmerson Smith and others against Martha E. Smith's executor and others. Decree for defendants dismissing the bill, and plaintiffs appeal. Affirmed.

Daniel Grinnan, Hill Carter, and A. B. Dickinson, all of Richmond, for appellants.

A. W. Patterson, of Richmond, *John Phelps and Christian, Gordon & Christian*, of Richmond, for appellees.

Ex parte MALLORY.

Jan. 24, 1918.

[94 S. E. 782.]

1. infants (§ 19*)—Custody—Repeal of Statute.—Acts 1910, c. 289, providing for the detention or commitment of minors under 17 for certain offenses, for placing them in suitable homes and institutions, and providing for probation, etc., was impliedly repealed by Acts 1914, c. 350, prescribing the procedure in such matters.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 461.]

2. Infants (§ 19*)—Custody of Children—Statute—Notice.—An order of the juvenile and domestic court of the city of Richmond, committing the custody and control of children charged only with being dependent and neglected children to the Children's Home Society upon complaint and information during their father's temporary absence, without any notice whatever to him, as required by Act 1914, c. 350, or any procedure dispensing with notice, was beyond the court's jurisdiction and void.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 461.]

Habeas corpus by one Mallory. Petition granted.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.